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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/130,998 08/07/98 STERN M 15818-005000

LM02/0913
TOWNSEND AND TOWNSEND AND CREW
TWO EMBARCADERO CENTER
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SAN FRANCISCO CA 94111-3834

EXAMINER

CAUDLE, F

ART UNIT

PAPER NUMBER

2765
DATE MAILED:

09/13/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/130,998

Applicant(s)

Stern, Micheal

Examiner

Penny Caudle

Group Art Unit

2765



☒ Responsive to communication(s) filed on Aug 23, 1999

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-4, 6-14, and 16-20 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-4, 6-14, and 16-20 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

1. In response to the Amendment filed on August 23, 1999, claims 1, 10 and 16 have been amended and claims 8 and 15 have been canceled. Claims 1-4, 6-14, 16-20 are pending.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1, 10 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As per claim 1 and 10, the phrase "maintained in short term memory" is unclear as by definition, short term memory is not "maintained". Therefore, for the purpose of this examination, the phrase "maintained in short term memory" is interpreted as acknowledge in short term memory.

As per claim 16, the phrase "a predetermined distance based on the duration of short term memory" is a relative term which renders the claim indefinite. The "duration of short term memory" is not defined by the claim, further the specification discloses that the duration of short time memory "lasts many seconds" which is also a relative term, therefore, the specification does

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not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim Rejections - 35 USC § 102

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1, 2, 4-6, 10-12, and 16-18 are rejected under 35 U.S.C. 102(a) as being anticipated by Harrison, III et al (U.S. 5,642,484), as discussed in paragraph 3 of paper number 7.

As per claims 1 and 10, the original rejection is maintained with the following clarification. The added limitation of "wherein stimulus corresponding to said first product is maintained in a short term memory of said customer upon moving from said first site to said product" is considered inherent to the Harrison, III et al system, as all stimulus which is perceived by a customer is acknowledged or held in short term memory until such time that the stimulus is submitted to long term memory. Therefore, by providing stimulus to the customer, said stimulus acknowledged in the customer's short term memory. In addition, the Harrison, III et al system is used to stimulate impulse buying at services stations and convenience stores(col. 5 lines 63-66), by definition, impulse buying requires proximity to the product.

As per claim 16, the original rejection is maintained with the following clarification. Harrison, III et al disclose the added limitation of "including code for selecting a first of said sites and for transmitting information corresponding to a first of said products thereto, said first site

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being separated from said first product by a predetermined distance based on the duration of short term memory". Harrison, III et al disclose a system for providing distribution and presentation of information at point-of-sale devices of terminals(col. 1 lines 55-65). In addition, the Harrison, III et al system is used to stimulate impulse buying at services stations and convenience stores(col. 5 lines 63-66), by definition, impulse buying requires proximity to the product.

Claim Rejections - 35 USC § 103

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
7. Claims 3, 7, 13,14, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harrison, III et al (U.S. 5,642,484) in view of Fite et al (U.S. 5,557,721), as discussed in paragraph 5 of paper number 7.
8. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Harrison, III et al (U.S. 5,642,484), as discussed in paragraph 6 of paper number 7.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Penny Caudle whose telephone number is (703) 305-0756. The examiner can normally be reached Monday-Thursday from 6:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allen MacDonald, can be reached at (703) 305-9708.

The fax number for Formal or Official faxes to Technology Center 2700 is (703) 308-9051 or 9052. Draft or Informal faxes for this Art Unit can be submitted to (703) 308-5357.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3900.

plc

September 10, 1999



ALLEN R. MACDONALD
SUPERVISORY PATENT EXAMINER